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<b>Rakym Durham,</b>	<b>:</b>	<b>United States District Court</b>
<b>Plaintiff,</b>	<b>:</b>	<b>Eastern District of Pennsylvania</b>
<b>vs.</b>	<b>:</b>	
<b>Officer Carr #1250 and Officer Clift #1259</b>	<b>:</b>	<b>Civil Division – Civil Rights</b>
<b>Defendants.</b>	<b>:</b>	<b>Case No.: 2:20-cv-03944</b>

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Plaintiff's Motion for  
Leave to Amend Complaint is GRANTED pursuant to F.R.C.P. 15(a)(1)(B).

**BY THE COURT:**

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**Honorable Judge Mark Kearney**

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<b>Rakym Durham,</b>	:	<b>United States District Court</b>
<b>Plaintiff,</b>	:	<b>Eastern District of Pennsylvania</b>
<b>vs.</b>	:	
<b>Officer Carr #1250 and Officer Clift #1259</b>	:	<b>Civil Division – Civil Rights</b>
<b>Defendants.</b>	:	<b>Case No.: 2:20-cv-03944</b>

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Plaintiffs, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, moves for leave of Court to file an Amended Complaint. Further, in support of this Motion, moving Plaintiff incorporates by reference and rely upon the Memorandum of Law filed herewith.

Respectfully Submitted,

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/S/ David Wesley Cornish, Esquire  
David Wesley Cornish, Esquire  
Bar ID #: 310865  
230 South Broad Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
Phone: 212-444-2039  
**ATTORNEY FOR PLAINTIFF**  
**DATE:** June 21, 2021

<b>Rakym Durham,</b>	:	<b>United States District Court</b>
<b>Plaintiff,</b>	:	<b>Eastern District of Pennsylvania</b>
<b>vs.</b>	:	
<b>Officer Carr #1250 and Officer Clift #1259</b>	:	<b>Civil Division – Civil Rights</b>
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE TO  
FILE AN AMENDED COMPLAINT**

**I. INTRODUCTION**

Plaintiff originally filed a Complaint, to which the Defense filed a Motion to Dismiss, to which a subsequent Amended Complaint was filed. *See* Docket No. 15. This motion is being made pursuant to both parties conducting discovery. This would be the second request for a motion for leave to amend Plaintiff’s complaint. The Defense does not object to this Amended Complaint being filed.

**II. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 15(a)(2) provides that a “*Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.”

Federal Rule of Civil Procedure 15(a)(1)(B) provides that a “party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b), (e), or (f).”

**III. ARGUMENT**

In *Foman v. Davis*, 371 U.S. 178 (1962), the Court noted that Rule 15(a) declares that leave to amend shall be “freely given” when justice so requires and that “this mandate is to be heeded.” *Id.* at 230. The Court noted that a Plaintiff ought to be afforded the opportunity to amend a complaint so long as there is no apparent undue delay, bad faith, or dilatory motive evidenced by

the moving party, or repeated failure to cure deficiencies by amendments previously allowed. Although the District Court has discretion to grant an amendment, “outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion.” *Id.* “Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility.” *In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted); *see also Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413 (3d Cir. 1993). The Third Circuit has found “prejudice to the non-moving party is a touchstone for denial of an amendment.” *Lorenz*, 1 F.3d at 1414.

In the instant case, Plaintiff is filing this amended complaint solely based on information learned during the discovery period. Based on paperwork and multiple depositions the alleged Defendants were not the proper parties and in fact two other police officers were the ones who participated in booking the Plaintiff. After consulting with Defense Counsel, both parties stipulated to dismissing the named Officers, and the Defense does not object to allowing the Plaintiff to file an amended complaint. Granting this motion for leave will in no manner harm, injure, or prejudice the Defense and/or unduly burden or delay the this Court in proceeding with the matter. Plaintiff asks for 21 days to be able to amend this complaint.

#### **IV. CONCLUSION**

**WHEREFORE**, Plaintiff respectfully request this Court enter an order granting Plaintiff's Motion for Leave to File Amended Complaint and grant such further relief as the Court deems appropriate.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on this day, the foregoing was filed with the Clerk of the Court and a copy was sent to the counsel of record at:

**Meghan Byrnes, Esquire**  
City Law Department  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19107

**VERIFICATION**

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief and are verified subject to the penalties for unsworn falsifications and perjury via the United States Code.

Respectfully Submitted,

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